STATE BOARD OF EDUCATION

STATE OF GEORGIA

KAREN ISENHOWER,	:	
	:	
Appellant,	:	
	:	
vs.	:	**CASE NO. 2006-49**
	:	
TROUP COUNTY	:	
BOARD OF EDUCATION,	:	
	:	**DECISION**
Appellee.	:	

This is an appeal by Karen Isenhower (Appellant) from a decision by the Troup County Board of Education (Local Board) that she was not a resident of Troup County and, therefore, could not enroll her son in the Troup County School System. Appellant claims that the evidence supports her claim that she is a resident of Troup County. The Local Board's decision is sustained.

On September 16, 2005, Appellant enrolled her son in the Troup County schools after withdrawing him from the Heard County schools. She signed an affidavit that her residence was 215 Jandale Drive, LaGrange, Troup County, Georgia. On September 21, 2005, Appellant filed a Notice of Candidacy to run as a county commissioner in Heard County and listed her residence as 1206 Ferry Road, Franklin, Heard County, Georgia, stating that she had lived in Heard County for 11 years and had been a legal resident of her district for three years. On October 10, 2005, the Local Superintendent notified Appellant that she would have to withdraw her son from school because of her residency in Heard County. On October 15, 2005, Appellant obtained a driver's license that listed her address as 215 Jandale Drive, LaGrange, Georgia. On October 24, 2005, Appellant signed a Campaign Contribution Disclosure Report in which she again listed her residence as 1206 Ferry Road, Franklin, Heard County, Georgia.

At the hearing before the Local Board, evidence was presented that Appellant maintained the house at 1206 Ferry Road in Heard County and had all of her furniture and personal possessions there. Appellant became dissatisfied with the Heard County schools and claimed that on September 16, 2005, she and her son moved in with a male friend of hers who lived at 215 Jandale Drive, LaGrange, Georgia. Appellant kept her clothes and her son's clothes at the 215 Jandale Drive address. The Local Board found that Appellant had attempted to circumvent the provisions of it Policy JBC and voted not to permit Appellant's son to attend the Troup County schools.

The Local Board's policy JBC provides, in part:

> All students attending Troup County Schools must live and reside in Troup County and must continue to so live and reside while attending Troup County Schools. ... The place of residence or the place at which the student lives will be: (1) ... the residence of the parent having actual custody of the child .... (2) in the instance of a child who in good faith resides with another family member who is *in loco parentis*, the residence of such family member can be the residence of such child if the Superintendent in each instance shall find and determine that such child does in fact reside with such relative and that such residence is not an attempt to circumvent the provisions of this policy.

Troup County Schools – Board Policy Manual, Descriptor Code: JBC (7/1/2001).

Appellant claims that there was no finding that she was not a resident of Troup County or that her son was residing with another family member who was *in loco parentis*, thus negating the application of the second test, which involves a determination of whether there has been an attempt to circumvent the provisions of the policy. Appellant claims, therefore, that the Local Board exceeded its authority in removing her son from the Troup County schools. Additionally, Appellant claims that a person can maintain more than one residence so that she could list one address with the Troup County School System and another address on the Notice of Candidacy and Affidavit.

Appellant makes a clever argument, but the issue argued at the hearing before the Local Board was whether Appellant was a resident of Heard County or of Troup County. It is clear that the Local Board found that Appellant was not a resident of Troup County and was not resting its decision on whether Appellant's son was residing with another family member who was *in loco parentis.* "The standard for review by the State Board of Education is that if there is any evidence to support the decision of the local board of education, then the local board's decision will stand unless there has been an abuse of discretion or the decision is so arbitrary and capricious as to be illegal. *See, Ransum v. Chattooga County Bd. of Educ.*, 144 Ga. App. 783, 242 S.E.2d 374 (1978); *Antone v. Greene County Bd. of Educ.*, Case No. 1976-11 (Ga. SBE, Sep. 8, 1976)." *Roderick J. v. Hart Cnty. Bd. of Educ.*, Case No. 1991-14 (Ga. SBE, Aug. 8, 1991). There was evidence that Appellant was a long-time resident of Heard County, she filed to run as commissioner of Heard County and stated her residence was Heard County after she had enrolled her son in the Troup County school, and she later filed a campaign finance disclosure statement that stated she was a resident of Heard County. There was, therefore, evidence to support the Local Board's decision that Appellant was not a resident of Troup County.

Appellant is correct in her assertion that a person can have more than one residence. "Domicile, unlike residence, means a permanent place of habitat. .... A person may have several residences, but only one domicile." *Smiley v. Davenport et al.*, 139 Ga. App. 753, 756, 229 S.E.2d 489, 491 (1976). The *Smiley* court pointed out that the words "residence" and "domicile" are frequently confused and used interchangeably when they

"are not synonymous and convertible terms." *Smiley* at 755, 491. For example, O.C.G.A. § 21-2-2(32) provides that "'Residence' means domicile." With respect to the residence of students, "Residence has been generally interpreted to mean the domicile of the child...." *Peavy v. Houston Cnty. Bd. of Educ.*, Case No. 1986-12 (Ga. SBE, June 12, 1986). *See, also, Edalgo et al. v. Southern Railway Co.,* 129 Ga. 258, 266, 58 S.E. 846, 850 (1907). "The existence or nonexistence of domicile in any given locality, where the facts are conflicting, is a mixed question of law and fact and insofar as it involves ascertainment of the intention of the party, it is solely within the province of the jury." *Smiley* at 757, 492. In the instant case, the Local Board acted as the jury and determined that the conflicting facts established that Appellant was domiciled in Heard County rather than Troup County.

Based upon the foregoing, it is the opinion of the State Board of Education that there was evidence to support the Local Board's decision and the decision was not capricious or arbitrary. Accordingly, the Local Board's decision is SUSTAINED.

This _____ day of April 2006.

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William Bradley Bryant
Vice Chairman for Appeals